

UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences

In re Application of: Bernd Schessl et al.  
Application Number: 10/575,297  
Filing Date: 04/11/2006  
Group Art Unit: 3781  
Examiner: Stephen J. Castellano  
Title: CROCKERY BASKET COMPRISING HEIGHT-ADJUSTABLE  
RACKS

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
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**REPLY BRIEF**

Appellants hereby file a Reply Brief to the Examiner's Answer mailed December 27, 2010 for the above-identified application.

In the Examiner's Answer dated December 27, 2010, the Examiner includes extra argumentation and/or explanation necessitating this response.

First, on page 5, lines 15 and 16, the Examiner states "The common edge is the edge formed by the wire that extends around the circumference of the framework (all four sidewalls)". In addition, the Examiner takes the position that the claimed "single side of the framework" should be interpreted in accordance with the paragraph at the bottom of page 10 of the Examiner's Answer.

Claim 13 is directed toward a crockery basket comprising a framework including a common edge, a plurality of holding elements for holding the at least one rack at different height positions on the crockery basket, the plurality of holding elements being secured on the common edge along a single side of the framework.

The Examiner's interpretation of Smith is improper. Smith teaches a pair of supports 22 being provided on opposite sides of a crockery basket, not secured on a common edge along a single side of the framework, per claim 13. One of ordinary skill in the art would interpret Smith

in accordance with the Smith description, not the manner in which the Examiner has asserted. In particular, Smith teaches a shelf 20 that is mounted between a pair of opposite side walls, in the illustration between front wall 16 and rear or back wall 17, by means of a pair of plates or end caps 22". Column 2, lines 60-62. See also, column 3, lines 9-12 ("same design plate can be used on both of a pair of opposite sides of the dishrack ..."). In view of Smith's disclosure, it is unreasonable for the Examiner to arbitrarily break up Smith into "left" and "right" sides and to also arbitrarily assign the four sided rack, with four edges, as having a common edge spanning all four sides. Moreover, the Examiner has expressly stated (page 10, lines 15-16), that "Appellant is correct in stating that the holding elements (end caps 22) of Smith are placed on opposite sides of the framework." (Underlining added.) This admission is at odds with the Examiner's stretched interpretation.

In addition, the Examiner states (page 7, lines 15-20) that the motivation for the combination of Smith in view of Luukkonen or Remmers "... would be to replace a bulky and unobtrusive end caps 22 with a lighter, less obtrusive support (either clips 40 of Remmers or the fastening elements 7 of Luukkonen) in order to save weight to make the crockery basket more convenient to push, pull or carry and to open the space of the crockery basket so that dishwashing fluid can flow more freely through a side that had been partially blocked by an obtrusive end cap 22".

The Examiner added this "motivational" statement as a result of Applicants pointing out that the Examiner, in the Final Rejection, had not pointed to any motivation in order to combine the references.

Applicants respectfully submit that the Examiner's alleged motivation is based on mere conjecture, without pointing to any substantial evidence of record to support the Examiner's contentions. For example, the Examiner has not shown that the supports of Luukkonen or Remmers are lighter, less obtrusive or less bulky than the supports of Smith. Even if they were lighter, this would not necessarily show that the basket would be more convenient to push, pull or carry, especially as any savings in weight would likely be minimal compared to the weight of the rack (and crockery items loaded therein). In addition, the Examiner has pointed to no substantial evidence to show that the space of the crockery basket would be opened up so that dishwashing fluid can more freely flow through a side that has been partially blocked by an obtrusive end cap 22. There is simply no evidence of record to suggest that the end caps of

Smith block fluid, or that replacing Smith's end caps with the clips of Remmers or Luukkonen would improve such a situation.

The Office Action states (page 12, lines 2-4) in relation to "Issue D" that "Appellant states that the combination would be inappropriate because the distal end of the support rack of Smith would not be supported if this combination were to be made. However, support for the distal end of the rack is not claimed in claim 13 or 31".

First, it appears that the Examiner's position is to simply "replace" the supports 22 of Smith. Thus, the supports would still be placed on opposite sides of the rack in which case the subject matter of claim 13 would not be satisfied which recites that the plurality of holding elements are secured on the common edge along a single side of the frame work.

Second, assuming that the Remmers or Luukkonen clips replaced those of Smith, there would be no provision to support the shelf in either its lower position or its upper position. As shown in Smith's Figures 6 and 7, the rack is movable between a generally horizontal position and a generally vertical position, in which positions the movable rack is supported by a portion of the support 22. For example, Figure 7 shows that the support in the horizontal position is supported by element 56, while in the horizontal position is supported by element 63.

Both Luukkonen and Remmers at best show the support of a wire in a single position there being no provision for its support in another position as required in the apparatus of Smith. Moreover, Applicants acknowledge that the support for the distal end is not set forth in claims 13 or 31, the point being that Smith requires a respective support for the upper and lower positions which would not be satisfied by replacing those supports with those of Remmers/Luukkonen.

Even assuming that the combination of Smith with Remmers or Luukkonen is proper, that combination would still not teach the claimed subject matter. First, the Examiner's position is to simply replace the supports 22 of Smith. In that case, replacing the supports 22 with the clips of Remmers or Luukkonen would still result in a plurality of holding elements being secured on opposite sides of the framework, rather than on a common edge along a single side of the framework as claimed. Second, the asserted combination would not result in a plurality of holding elements for holding the at least one rack at different height positions on the crockery basket. While Smith's supports 22 provide for the rack to be positioned at different height positions as shown in Figures 6 and 7 of Smith, Remmers and Luukkonen do not teach or suggest the ability to support a rack at different height positions on the crockery basket.

Remmers and Luukkonen only teach clip elements for supporting a wire element at a single location.

For the reasons explained in the Appeal Brief and the instant Reply Brief, the Board should reverse the final rejection.

Respectfully submitted,

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February 17, 2011

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